

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Criminal Appeal 146 of 2006

SEBAMALAI BABUL THAYALAN.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

SEBAMALAI BABUL THAYALAN pleaded guilty to **KNOWINGLY POSSESSING AND USING A FORGED PASSPORT** contrary to **Section 13(1) (d)** of the **Immigration Act**, **BEING UNLAWFULLY PRESENT IN KENYA** contrary to **Section 13(2)** of the same Act and **FAILURE TO REPORT ENTRY TO THE NEAREST IMMIGRATION OFFICER** contrary to **Section 3(a)** as read with **Section 3(6)** of the same Act. He was convicted and imprisoned for 4 months, 3 months and 1 month respectively. Being aggrieved by the sentence he lodged this appeal.

MR. KARIUKI, who argued the appeal on his behalf submitted that the Appellant was aged 21 years, was a university student and a first offender. He pleaded for an alternative sentence urging the court to be sympathetic to the Appellant.

MRS. OBUO learned counsel for the State left the matter to court stating that issues of sentence were courts' discretion. Counsel however observed that the sentences imposed were legal.

I have carefully considered this appeal and the facts and circumstances of the case. I have also considered the grounds raised in the filed petition of appeal and submissions by both counsels. An appellate court cannot interfere with the exercise of the trial courts discretion in sentence unless it is shown that the trial court failed to apply sentencing principles or failed to put into consideration important factors. In this case the Appellant pleaded guilty to the charges and saved court's time. He was also a first offender. The learned trial magistrate indicated that he noted both factors before passing sentence. What seems to have eluded the trial court's mind is a consideration as to the Appellant's youthful age. The fact the Appellant pleaded guilty and thus saved court's time and demonstrated his remorsefulness for the offence including the fact that he was a first offender should have moved the court to consider a non-custodial sentence as the more appropriate sentence. In the circumstances the sentence passed by the lower court was harsh and excessive. I will allow the appeal by setting aside the sentence.

I have considered that the Appellant served three weeks in prison. In substitution to sentence of imprisonment, I order that the Appellant pays a fine of Kshs.10,000 (Ten Thousand) in count 1 in default one months imprisonment.

In counts 2 and 3 he is discharged unconditionally under **Section 35(1)** of the **Penal Code**.

The Appeal succeeds to that extent.

Dated at Nairobi this 7th day of April 2006.

LESIT, J.

JUDGE

Read, signed and delivered in the presence of;

Appellant present

Mr. Kariuki advocate for the Appellant

Mrs. Obuo for State

Huka CC

LESIT, J.

JUDGE